

The Hotel Operators' Occupation Tax Act imposes a tax upon persons engaged in the business of renting, leasing or letting rooms in a hotel in Illinois. See 86 Ill. Adm. Code 480.101. (This is a GIL).

May 17, 2000

Dear Xxxxx:

This letter is in response to your letter received April 11, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's Internet website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

I am writing on behalf of NAME youth performance and educational organization. We recently received sales tax exemption for our organization. We were given a ruling good through April 1, 2005.

In granting our request for sales tax exemption, we noticed that the official document declaring our organization tax exempt, did not include exemption from hotel, electricity, and telecommunications. We are asking that these exemptions be considered due to our plans of renting out private office and rehearsal space of which we will need electricity, phone, and computer supply. Also we are a traveling performance group and would like to have hotel exemption. If you have any further questions regarding these requests, please contact #####. Once again thank you.

We are unable to grant you the exemption you request from the Hotel Operators' Occupation Tax Act. The Hotel Operators' Occupation Tax Act imposes a tax upon persons engaged in the business of renting, leasing or letting rooms in a hotel in Illinois. See the enclosed copy of 86 Ill. Adm. Code 480.101. The Hotel Operators' Occupation Tax applies to gross receipts received from a person who occupies a room or becomes irrevocably liable to pay rent for the right to occupy a specific room or rooms. See Section 480.101(c)(1).

Please note that the Hotel Operators' Occupation Tax is a tax imposed upon hotel operators and not hotel guests. The Hotel Operators' Occupation Tax Act allows hotel operators to collect an amount from their customers that represents reimbursement for the hotel operators' tax liability. As a result, there is no tax that is imposed upon guests from which they can be exempted. The fact that these guests hold exemption identification numbers issued by the Department does not exempt them from reimbursement.

The only exemptions available to hotel operators are for rentals to permanent residents and to certain diplomatic personnel. Permanent residents are persons who occupy or have the right to occupy such rooms for at least thirty consecutive days. See 86 Ill. Adm. Code 480.101(a)(1).

The Electricity Excise Tax Law became effective August 1, 1998. See, 35 ILCS 640/1 et seq. This tax is imposed upon the privilege of using in this State electricity purchased for use or consumption and not for resale, other than by municipal corporations owning and operating a local transportation system for public service. The incidence of this tax is on the consumers of electricity.

Organizations that make application to the Department pursuant to provisions in the Retailers' Occupation Tax Act and are determined to be exclusively religious, educational, or charitable, and receive an exemption identification number (an "E" number) are generally not exempt from paying Electricity Excise Tax. Therefore, we are unable to grant your request for an exemption from this tax.

Further, it is unclear what you intend to do when you rent out office space. If you sell electricity at retail to your tenants, you may be considered a delivering supplier of electricity and therefore liable for the collection of the tax. However, if you pay the tax to your supplier and then pass on the electricity charge to your customers by incorporating the charge within the rent, you may not be responsible for the collection of the tax. Please do not be cavalier in setting up these transactions.

The Telecommunications Excise Tax Act, found at 35 ILCS 630/1 et seq., imposes a tax upon the act or privilege of originating or receiving in the State of Illinois interstate telecommunications by a person in Illinois at the rate of 7% of the gross charge for such telecommunications purchased at retail from a retailer by such person. See, 35 ILCS 630/4. The Telecommunications Excise Tax Act is a separate and distinct Act from the Retailers' Occupation Tax Act, which is commonly referred to as the sales tax. The exemptions provided for in the Retailers' Occupation Tax Act are not incorporated by reference into the Telecommunications Excise Tax Act. Therefore, exemptions are not available from the Telecommunications Excise Tax unless they are specifically included within the Telecommunications Excise Tax Act.

Organizations that make application to the Department pursuant to provisions in the Retailers' Occupation Tax Act and are determined to be exclusively religious, educational, or charitable, and receive an exemption identification number (an "E" number) are generally not exempt from paying Telecommunications Excise Tax. Therefore, we are unable to grant you an exemption from this tax.

Entities which are exempt from the Telecommunications Excise Tax include Federal and State governments, State Universities created by statute, as well as sales between a parent corporation and its wholly owned subsidiary or between wholly owned subsidiaries for use or consumption (and

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not for resale). However, such entities are not generally exempt from the obligation to collect and remit tax on sales of telecommunications to others when they act as retailers of such telecommunications.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.